

Commonwealth Automobile Reinsurers

Rules of Operation

**Rule 14 - Representative Producer and
Exclusive Representative Producer Requirements**

A. Appointments

1. Representative Producer Appointments

Agents or brokers who have a voluntary agency or brokerage agreement with any Member Company appointed as a Servicing Carrier in accordance with these Rules shall be assigned to represent those Servicing Carriers, as Representative Producers, as defined in Rule 2, for new and renewal private passenger motor vehicle business, consistent with such voluntary agency or brokerage agreement. Such Carriers shall service such Representative Producers under substantially the same contractual terms and conditions governing their normal agency relationship.

2. Exclusive Representative Producer Appointments

a. New Appointments

Any licensed agent or broker who does not have a voluntary agency or brokerage agreement for private passenger or commercial motor vehicle business with any Member Companies appointed as Servicing Carriers in accordance with these Rules or, as of January 1, 2006, any licensed agent or broker who has not been appointed as a commercial Exclusive Representative Producer to one of the Member Companies which has been selected by the Governing Committee as a commercial Servicing Carrier, may apply for an appointment to represent a Servicing Carrier, as an Exclusive Representative Producer, as defined in Rule 2 for new and renewal business. The producer shall be subject to the provisions of the Eligibility Requirements (Rule 14, A, 2, e). If CAR determines the applicant has satisfied these eligibility criteria the applicant will be appointed to a Servicing Carrier as an Exclusive Representative Producer. Such Carriers shall service such Exclusive Representative Producers under substantially the same contractual terms and conditions governing their normal agency relationship.

For all private passenger Servicing Carriers and those commercial Servicing Carriers for December 31, 2005 and prior, if an applicant is applying as a consequence of the involuntary cancellation of a voluntary agency or brokerage agreement, as far as is possible, the appointment shall be made to an insurer other than that which last cancelled a voluntary agreement for motor vehicle insurance business with the applicant.

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Appointments (continued)

In the case of an applicant who is applying as a consequence of a voluntary agency or brokerage agreement being terminated because the applicant (1) intentionally withdraws from a voluntary agreement to write motor vehicle insurance business on behalf of a Servicing Carrier, or (2) requests cancellation of a voluntary agreement for motor vehicle insurance business, or (3) engages in conduct which CAR concludes by its nature raises such issues as to the ethical or professional standards of the agent or broker that would reasonably cause the voluntary Servicing Carrier to terminate its voluntary agreement, and the voluntary Servicing Carrier as a result of that conduct does so terminate the agreement with the agent or broker, such agent or broker is ineligible for appointment to a Servicing Carrier as an Exclusive Representative Producer.

b. Affiliated Producers

- (1) If an applicant for a private passenger appointment to represent a Servicing Carrier as an Exclusive Representative Producer, or a producer holding an involuntary (Exclusive Representative Producer) appointment, for private passenger motor vehicle insurance business is found to have a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm which has a voluntary (Representative Producer) or involuntary (Exclusive Representative Producer) appointment to a Servicing Carrier for the same type of business or vice versa, the producer is presumed to be an affiliate of the other agency or brokerage firm and is ineligible for appointment, or for the continuation of an appointment, to a Servicing Carrier as an Exclusive Representative Producer for that type of business insofar as there exists a Servicing Carrier market through the affiliated agency.

An Exclusive Representative Producer that CAR determines has an affiliated voluntary relationship, as described in the preceding paragraph, which existed prior to January 1, 1991, may continue in that status only for so long as such voluntary relationship with the Servicing Carrier(s) is maintained. Business written through the Exclusive Representative Producer will be assigned the same C.A.R I.D. Codes as

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that written through the affiliated agency and the Servicing Carrier will not be entitled to additional fees as provided in Rule 17, or to the option provided by Rule 13, B, 7, c, regarding cession backdate.

- (2) An applicant for a commercial Exclusive Representative Producer appointment determined to have an affiliated relationship or an existing commercial ERP identified as having an affiliated relationship will be assigned to the same Servicing Carrier as all members of the affiliated group.

An affiliation will be presumed to exist if the new applicant or existing ERP is found to have a contractual relationship or membership in a producer cluster or network, or is found to have a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm. Assignments emanating from the formation of an affiliated group for the sole purpose of placing commercial automobile business are prohibited.

- (3) An applicant for a commercial ERP appointment must identify any affiliated relationships at the point of application. An existing commercial ERP must notify its Servicing Carrier of any new affiliated relationship, or change in affiliated status within thirty (30) days of such change.
- (4) Annually as of the commercial ERP appointment date, each ERP will be required to furnish its Servicing Carrier with a completed affiliated agency disclosure form.
- (5) Failure to furnish the completed affiliated agency disclosure form will result in the termination of the ERP appointment for commercial motor vehicle business by the assigned Servicing Carrier. An ERP terminated under the provision of this section shall be provided a thirty (30) day written notice, and shall be ineligible for appointment to a Servicing Carrier for a period of two (2) years commencing on the effective date of the termination.

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A. Appointments (continued)

- (6) Any applicant aggrieved by staff's determination of its affiliated status may appeal to the Governing Committee and may present evidence to refute that determination. If the applicant is successful in refuting that determination, it will be appointed to a Servicing Carrier under the same terms and conditions as an Exclusive Representative Producer.

c. Dual Status Producers

An agent or broker which has an Exclusive Representative Producer appointment to a Servicing Carrier and which also has a voluntary agreement(s) with a Servicing Carrier(s) or non-Servicing Carrier to write motor vehicle insurance of the same type may retain such Exclusive Representative assignment until November 16, 1997 for new business and December 31, 1997 for renewal business.

An agent or broker which has an involuntary (Exclusive Representative Producer) private passenger appointment to a Servicing Carrier and which subsequent to September 17, 1997 obtains a voluntary contract with another Servicing Carrier or non-Servicing Carrier will retain the involuntary assignment for renewal business only, for three months from the date on which the voluntary contract is effective. At the conclusion of said three month period, the assignment for renewal business will be rescinded. The involuntary assignment will be rescinded for new business on the date on which the voluntary contract is effective.

d. Sale of Exclusive Representative Producer Business

If an agent or broker which has an Exclusive Representative Producer appointment to a Servicing Carrier sells its stock or its book of business to a producer which does not have a motor vehicle insurance relationship with a Servicing Carrier, such appointment will inure to the purchaser subject to the eligibility requirements and production and market need criteria of this Rule, notwithstanding the location of the seller's place of business. If the Exclusive Representative Producer appointment was in a probationary status, as respects the above requirements or criteria, that status will carry over to the purchaser of this business.

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If the sale does not result in the continuation of the appointment to the sellers' Servicing Carrier, then that Servicing Carrier shall enter an agreement with the purchaser whereby all risks written by the Servicing Carrier on behalf of the seller, for policies with an effective date as of 90 days subsequent to the date of the sale for renewal business and as of the date of sale for new business, will be fully serviced through the purchaser until the policy expiration date of each risk, as noted on the declaration page of each policy in force as of these respective dates.

Servicing shall include, but not be limited to, change of existing vehicles, adding insureds, adding named operators onto the existing policy, endorsing coverage limits, providing all notices required by law, claims processing and premium collection. All other obligations of both Servicing Carrier and producer as set forth pursuant to the Plan and Rules of Operation shall remain in force during the term of this agreement.

e. Eligibility Requirements

Prior to any action being taken on an application for an Exclusive Representative Producer appointment, the agent or broker must satisfy the Governing Committee that he or she:

- (1) has completed a course of study, approved by the Commissioner of Insurance, which concentrates on the Massachusetts private passenger or commercial motor vehicle insurance system depending upon the line of business for which an appointment is sought;
- (2) has attained a passing grade on a written examination based on material covered in the approved course;
- (3) has within the preceding twelve (12) month period worked for a minimum of six (6) months with an agent or broker licensed by the Division of Insurance, or with a Massachusetts automobile insurer, during which time the applicant's efforts were primarily devoted to the Massachusetts motor vehicle insurance market; and

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- (4) for private passenger appointments will be addressing a market need as determined by criteria to be established by the Governing Committee of CAR.
- (5) for commercial appointments, has an existing commercial relationship with a non-Servicing Carrier or can provide letter(s) of intent from insureds identifying commercial policies expected to be written as of the first year of appointment that would satisfy the production criteria established in Rule 14, D, 3. Continued eligibility is dependent upon compliance with the provisions of Rule 14, D, 3.
- (6) Having satisfied the preceding criteria the applicant must conclusively show that he or she:
 - (a) is applying in good faith;
 - (b) will operate from an established location in Massachusetts, except licensed nonresident agents or brokers if licensed pursuant to Massachusetts General Laws;
 - (c) will maintain regular business hours;
 - (d) has not been convicted of a crime related to his occupation as an insurance agent or broker;
 - (e) has not had his/her brokers license to engage as an insurance broker/agent revoked/suspended;
 - (f) has not been involved in a material and substantial breach of a contract between a Servicing Carrier and a producer;
 - (g) is not in default in remittance of any motor vehicle premiums due a Member company;
 - (h) agrees to comply with the provisions of the Plan of Operation, the Rules of Operation, the Manual of Administrative

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Procedures, the contract between the Exclusive Representative Producer and the Servicing Carrier, and the applicable regulations of the Division of Insurance;

- (i) agrees to notify C.A.R and the Servicing Carrier of an agreement to sell the agency fifteen (15) days in advance of the proposed closing of any such sale and further agrees to obtain a certification from the Servicing Carrier, which shall be provided to CAR, that the agency does not owe to the Servicing Carrier any past due premium based upon the latest available statement;
- (j) has not been declined an Exclusive Representative Producer assignment within the preceding sixty (60) days, said declination not having been reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.
- (k) has not had an Exclusive Representative Producer assignment rescinded or cancelled by a Servicing Carrier as provided in Rule 14, G, or been terminated as an Exclusive Representative Producer for failure to meet minimum production criteria or market need criteria as provided in Rules 14, C and D within the preceding twenty-four (24) months, said rescission or cancellation not having been reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

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B. Ongoing Exclusive Representative Producer Requirements

1. It will be the ongoing responsibility of an agent or broker which has an Exclusive Representative Producer appointment to a Servicing Carrier to fulfill the following requirements as well as the eligibility criteria in Rule 14, A, 2, e. Failure to do so will be grounds for termination of said appointment.
 - a. Require of all new applicants for insurance that they complete in its entirety a new business application for insurance;
 - b. Report all coverage bound and all registrations/titles certified to the Servicing Carrier within two working days after binding coverage or certifying a registration;
 - c. Verify that the applicant has not been in default in the payment of any motor vehicle insurance premiums in the past twelve (12) months;
 - d. Comply with the reasonable written procedures supplied by the Servicing Carrier for processing claims;
 - e. Forward to the insured within thirty (30) days of receipt from the Servicing Carrier, all policies and endorsements if not mailed directly by the Servicing Carrier to the policyholder;
 - f. Remit payments on a timely basis in accordance with the provisions set forth in the contract between the Servicing Carrier and the Exclusive Representative Producer, however, a Servicing Carrier shall extend the payment period for an additional seven days upon sufficient notice that all or part of a premium is being financed by a licensed premium finance company where the premium finance company has given its written assurance to pay the full premium financed to the Servicing Carrier directly. This provision shall not obligate a Servicing Carrier to provide such additional time if notwithstanding any written assurances the premium finance company has failed to perform its commitment previously;
 - g. Notify the Servicing Carrier of any suspected fraud surrounding a loss;
 - h. Cooperate with the Servicing Carrier and CAR personnel during all audits and investigations;

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B. Ongoing Exclusive Representative Producer Requirements (continued)

- i. Properly order endorsements;
- j. Order only those coverages from the Servicing Carrier requested by the insured, for which he may be eligible;
- k. Quote proper premiums based on information provided by the applicants for the coverage desired;
- l. Conduct all monetary transactions with the insured and the Servicing Carrier as required by the Rules of Operation and the Exclusive Representative Producer contract;
- m. Advise the premium finance company and/or the insured that checks for premiums for all financed accounts are to be made payable to the Servicing Carrier;
- n. Retain the necessary documentation of Servicing Carrier transactions in accordance with the Manual of Administrative Procedures;
- o. Notify the applicant for insurance that he has the option of utilizing an Installment Payment Plan;
- p. Comply with the Automobile Insurance Bureau Form 2-A Procedures relative to the use of the Notice of Transfer of Insurer form.
- q. Develop and maintain a book of business as required in paragraphs C and D.

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- C. Exclusive Representative Producer Responsibilities – Garaging Town Servicing Carrier Assignments
1. An Exclusive Representative Producer that has an appointment to more than one private passenger Servicing Carrier, as a result of the multiple Servicing Carrier relief process outlined in Rule 13, C, 2, b, (3) will place new and renewal business with the appropriate Servicing Carrier, based on the garaging town of the vehicle(s) on each policy, as follows:
 - a. Stamps, necessary forms and a list of Servicing Carrier garaging town assignments will be maintained in each office location for each Servicing Carrier to which the ERP has been appointed;
 - b. New and renewal business will be placed with the Servicing Carrier based upon the garaging town of the vehicle(s) on each policy;
 - c. For policies insuring multiple vehicles with different garaging towns, the entire policy will be assigned to the appropriate Servicing Carrier based on the garaging town of the first vehicle listed on the policy;
 - d. Policies placed with the incorrect Servicing Carrier will be rewritten immediately and placed with the correct Servicing Carrier retroactive to the original policy effective date;
 - e. For garaging towns that are reassigned to a new Servicing Carrier, the policies will be rewritten with that Servicing Carrier on the policy's next renewal effective date;
 - f. If the policyholder moves to a garaging town that is assigned to a different Servicing Carrier, the policy will be placed with the new Servicing Carrier upon renewal. However, in the case where the policy holder moves within sixty (60) days prior to the scheduled renewal effective date, the policy may be placed with the new Servicing Carrier on the next year's policy renewal date;
 - g. If a new book of business or new office location is acquired, that business will be placed with the appropriate Servicing Carrier based on the garaging town of the vehicle(s) on each policy, upon the policy's next renewal effective date.

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D. Production Criteria

1. All Exclusive Representative Producers whose applications were submitted and who were appointed on or after January 1, 1992, shall be reviewed annually on the anniversary of each Exclusive Representative Producer's contract date. Those Exclusive Representative Producers who within the first twelve (12) months after their contract date fail to develop a book of business of at least 100 motor vehicles, those Exclusive Representative Producers who within twenty-four (24) months following their contract date fail to develop a book of business of at least 250 motor vehicles, those Exclusive Representative Producers who within thirty-six (36) months following their contract date fail to develop a book of business of at least 400 motor vehicles, and those who subsequently fail to maintain a book of business of at least 400 motor vehicles as of their annual evaluation date, will be terminated, unless the Governing Committee or its designee determines particular circumstances that merit a continuation of the assignment. The Servicing Carrier shall be responsible for providing a copy of the evaluation to the Exclusive Representative Producer and to CAR. within fifteen (15) days of the evaluation date. The effective date of termination shall be one year after the evaluation date on which the Exclusive Representative Producer failed to develop or maintain the applicable minimum book of business. If during the twelve (12) month phase out period the Exclusive Representative Producer obtains and maintains the applicable minimum book of business, the termination process shall be suspended but the Exclusive Representative Producer shall continue to be subject to annual evaluations.
2. Annual evaluations of Exclusive Representative Producers whose appointments were effective prior to January 1, 1992, shall commence on and after January 1, 1992. Those Exclusive Representative Producers who fail to develop or maintain a book of business of at least 100 motor vehicles as of the latter of January 1, 1992, or the first anniversary of their appointment, and those Exclusive Representative Producers who fail to develop or maintain a book of business of at least 250 motor vehicles as of the latter of January 1, 1993 or the third anniversary of their appointment and as of each subsequent annual evaluation will be terminated unless the Governing Committee or its designee determines particular circumstances that merit a continuation of the assignment, pursuant to the terms and notification provisions set forth in paragraph 1 above.

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D. Production Criteria (continued)

3. Beginning with evaluations occurring on January 1, 2006 and thereafter, Exclusive Representative Producers appointed for commercial motor vehicle business, who within the first twelve (12) months after their appointment date fail to develop a minimum book of business of \$10,000 in commercial motor vehicle written premium, those who within twenty-four (24) months after their appointment date fail to develop a minimum book of business of \$20,000 in commercial motor vehicle written premium, those who within thirty-six (36) months after their appointment date fail to develop a book of business of \$30,000 in commercial motor vehicle written premium, and those who subsequently fail to maintain a book of business of at least \$30,000 in commercial motor vehicle written premium as of their evaluation date, will be terminated for commercial motor vehicle business.
4. An Exclusive Representative Producer terminated under the provisions of this section shall be ineligible for appointment to a Servicing Carrier for a period of two (2) years commencing on the effective date of the termination.

For purposes of this paragraph, the term Exclusive Representative Producer includes any licensed broker and any other newly emerging producer with whom or which the terminated Exclusive Representative Producer has a direct or indirect material and continuing proprietary or management interest.

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E. Market Need Criteria

1. Beginning January 1, 1990, CAR shall review the appointment of all Exclusive Representative Producers in order to determine whether there is a market need to be served by the Exclusive Representative Producer. CAR shall conduct such a review of each Exclusive Representative Producer as of the third anniversary of the producer's contract and at least once within each succeeding three year period.

Each Exclusive Representative Producer who does not meet the market need requirement shall be so notified by CAR within forty-five (45) days of the determination. If CAR finds that the Exclusive Representative Producer has: (a) been offered and has refused a voluntary contract to write motor vehicle business of the type covered by its Exclusive Representative Producer appointment with a company that is a Servicing Carrier; or (b) has not made a substantial effort to obtain such a voluntary contract with a Servicing Carrier, that Exclusive Representative Producer appointment shall terminate three years from the date of notification of CAR's finding. For each year during the three year time period, that Exclusive Representative Producer shall receive a dollar commission which is minus ten (10) percent of the dollar commission established by the Commissioner in his annual opinion, findings and decision on automobile insurance rates. Prior to any adjustment in commission paid to an Exclusive Representative Producer pursuant to this section, both CAR and the Servicing Carrier shall notify the affected Exclusive Representative Producer in writing of the commission adjustment.

2. The notification shall advise the Exclusive Representative Producer of the right to a hearing as provided in Rule 20. The Exclusive Representative Producer shall be given an opportunity to demonstrate to CAR that he/she is satisfying a market need based on criteria established by CAR or that he/she has been unable to obtain a voluntary contract to write motor vehicle business of the type covered by its Exclusive Representative Producer appointment during the twelve (12) months immediately preceding the date of notification.
3. If at any time during the three year period referred to in 1 above, the Exclusive Representative Producer satisfies the Governing Committee that he or she has made a substantial effort to obtain such a voluntary contract, such Exclusive Representative Producer shall be entitled, as of the date of the Governing Committee's finding, to full commissions as provided for in Rule 18 and to all other rights conferred by the Rules of Operation.

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F. Change of Assignment

1. Changes of assignment of Servicing Carriers, for reasonable business purposes, may be made upon application to and approval by the Governing Committee, provided there is no significant disruption of the marketplace and no unfair or inequitable apportionment of premiums, losses or expenses.

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G. Service Fees

1. G.L. c.175 §182 prohibits agents/brokers and others in connection with the placing or negotiation of insurance policies or the continuance or renewal thereof from selling or offering to sell anything of value whatsoever not specified in the policy of insurance, and further prohibits said agents and brokers from charging the insured at a rate different from that fixed, established or approved by the Commissioner. See also G.L. c.176D. The following acts and practices are prohibited:
 - a. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for certifying a registration on behalf of a Servicing Carrier;
 - b. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for acting as an agent/broker and placing the insured's motor vehicle insurance business with a Servicing Carrier;
 - c. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for providing assistance to the insured in the completion of forms which are completed in order for the insured to procure or to continue motor vehicle insurance; and
 - d. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for the sale of a "service contract" which provides for service or advice relating to the issuance, continuance, or renewal of an insured's motor vehicle insurance policy.
2. Nothing set forth in the provisions of paragraph 1 above is intended to prohibit agents/brokers from charging runners' fees and other non-insurance related fees if the following requirements are met;
 - a. The agent/broker provides to the insured a complete description of the non-insurance related services for which the fee, in addition to the premium rate, is being charged;

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G. Service Fees (continued)

- b. The agent/broker advises the insured that there is no obligation to purchase the non-insurance related service and that the insured may obtain motor vehicle insurance through the agent/broker, notwithstanding the insured's decision not to purchase the non-insurance related services;
 - c. The insured, after having been apprised of the information set forth in (a) and (b) above, agrees to pay the fee; and
 - d. The fee for the services provided is reasonable.
- 3. The agent/broker may enter into a contract with the insured pursuant to which the agent/broker provides non-insurance related services to the insured if the agent/broker complies with all of the requirements of paragraph 2 above. In the event the agent/broker and insured executes such a "service contract", the agent/broker shall give to the insured an executed copy of the contract and shall retain an executed copy in his or her file which shall be made available to the Servicing Carrier, Division of Insurance and CAR upon request.

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H. Appointment Ineligibility

1. Any licensed fire or casualty agent or broker who within the preceding twenty-four (24) month period has had an Exclusive Representative Producer assignment rescinded or cancelled by a Servicing Carrier with the said rescission or cancellation not having been reversed by the Governing Committee, the Division of Insurance, or court of competent jurisdiction shall be ineligible for an appointment to represent a Servicing Carrier as an Exclusive Representative Producer.

Any licensed fire or casualty agent or broker whose Exclusive Representative Producer assignment rescission or cancellation has not been reversed pursuant to the preceding paragraph and who, after a hearing by the Governing Committee or its designee, has been found to have committed a subsequent material and substantial breach of a contract with a Servicing Carrier, said finding not having been reversed by the Division of Insurance or a court of competent jurisdiction, shall be ineligible for an appointment to represent a Servicing Carrier as an Exclusive Representative Producer.

A material and substantial breach of contract will be deemed to have occurred where a finding has been made that the Exclusive Representative Producer has on three distinct occasions committed any of the following acts or omissions or on any one occasion has committed a combination of any three or more of the following acts or omissions:

- a. Failure to remit payments to a Servicing Carrier on a timely basis in accordance with CAR Rules of Operation and those prescribed by the Servicing Carrier.
- b. Failure to forward to any insured within thirty (30) days of receipt from the Servicing Carrier policies and endorsements (if not mailed directly by the Servicing Carrier).
- c. Failure to notify the Servicing Carrier of any suspected fraud, known to the Exclusive Representative Producer surrounding a loss.
- d. Failure to assist the Servicing Carrier during any audit or investigation of the motor vehicle business of the Exclusive Representative Producer.
- e. Failure to report to the Servicing Carrier all coverages bound, all registrations/titles certified within two working days after binding coverage or certifying a registration.

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H. Appointment Ineligibility (continued)

- f. Failure to comply with reasonable procedures as supplied by the Servicing Carrier for processing claims.
2. If a voluntary agent has been terminated by his or her voluntary Servicing Carrier as a consequence of any of the above acts or omissions, that former voluntary agent will be ineligible for appointment as an Exclusive Representative Producer for a period of two (2) years commencing on the effective date of the termination.
3. An Exclusive Representative Producer terminated for failure to meet minimum production criteria as provided in Rule 14, D or to meet market need criteria as provided in Rule 14, E shall be ineligible for appointment to represent a Servicing Carrier as an Exclusive Representative Producer for a period of two (2) years commencing on the effective date of the termination.
4. For purposes of this section, the term Exclusive Representative Producer includes any licensed broker and any other newly emerging producer with whom or which the terminated Exclusive Representative Producer has a direct or indirect material and continuing proprietary or management interest.